IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 3402 of 2005

Shri Bhimu alias Bhimgonda Ramgonda Patil ..Petitioner

vs.

Smt.Surekha Sanjay Patil ..Respondent

Shri P.S.Dani for petitioner.

CORAM: A.P.SHAH J.
13th September,2005

P.C.

. Learned Counsel for the petitioner is right in contending that the learned Trial Judge was in error in relying upon sections 24 and 25 of the Hindu Marriage Act as the present proceedings are for partition and provisions of Hindu Marriage Act are not attracted. However, this Court in Sushilabai Chhotelal Gupta Vs. Ramcharan Hanumanprasad Vaishya and another; 1976 Mh.L.J. 82 has held that a plaintiff suing for partition and separate possession of property in the hands of defendant if makes out a prima facie case for claiming partition, the Court has power under section 151, Civil Procedure Code, to grant interim maintenance during pendency of the suit if the plaintiff has no independent source of income.

. The Trial Court has awarded maintenance to the plaintiff and her son at the rate of Rs.1000/- p.m. I do not see any ground to interfere with the order of the Trial Court.

. Petition is dismissed. It is, however, made clear that the observations made by the learned Trial Court are only prima facie and tentative observations and will not preclude the defendant from raising all contentions at the trial including faactum of marriage.